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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,346	09/13/2004	George Manak	76385.0015	5345
29952 7590 04/21/2008 SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
04/21/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/711,346

**Applicant(s)**

MANAK ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 11/5/04, 3/30/06

Applicant's election with traverse of Group II, claims 15-32 in the reply filed on 1/30/08 is acknowledged. The traversal is on the ground(s) that the search for the two groups is the same. This is not found persuasive because the search required for the two groups is not the same. There are different issues in searching and applying prior art to a method versus an apparatus. The search for the apparatus is focus on the features found in the apparatus without regard to how the features are function or individual steps that are carried out using the features. A prior art applicable to the apparatus might not be applicable to the method. Thus, two different searches are required if the claims are examined together. Applicant has not argued that the two inventions are not patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

Claims 19, 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19 is vague and indefinite. The structure claimed is not clear. The claim recites that the tempering chamber is between the extruder and the comminuting device. However, the comminuting device comprises a first cutter and a second cutter; so is the chamber located between the first cutter and the extruder or the second cutter and the extruder.

Claim 27 is vague and indefinite; it is not clear if the extruder comprising a cutter is part of the comminuting device or the cutter is separate and totally different from the comminuting device.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15,26-28,31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Cross.

Cross discloses a system for making snack product. The system comprises a preconditioner, and extruder, a first dryer, a first cyclone separator, a second cyclone separator, a conveyor assembly and a spraying mechanism. . The cooker-extruder contains a cutter for cutting a cooked extrudate as it emerges from the extruder. When the use of a second drying apparatus is not feasible, the product can be returned to the first drying apparatus for further drying. The system comprises two cyclone separators, any apparatus capable of pneumatically transferring and thus agitating the material can be used. The pieces are pneumatically transferred. (see col. 1 lines 45-67, col. 2 lines 28-44, col. 5 lines 8-12, col. 6 lines 46-60, table 1 and the examples.

Cross discloses all the components of the claimed system which a an extruder, first dryer, second dryer and comminuting device as in claim 15. The functions of the components as claimed are intended use which does not determine the patentability of the system. For claim 28, the cyclone is a tempering chamber as the specification discloses a temperer is a cyclone separator. The extruder in Cross is heated and comprises a cutter as in claims 26,27. Cross discloses all the means cited in claim 28 and the stations in claim 32. The preconditioner is the intake station. Cross discloses

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the pieces are moved by pneumatically transferred; thus, Cross discloses pneumatic transport means as in claim 31.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 19, 21, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross.

Cross does not disclose the cyclone between the extruder and the comminuting device, a plurality of vertically extending transport lines.

It would have been obvious to one skilled in the art to arrange the separator of the system at alternative location depending on the function desired. For instance, if is desired to separate the extrudate before cutting, it would have been obvious to place the cyclone separator between the extruder and the comminuting device. It would also have been obvious to use vertical transporting lines if a vertical configuration is desired. This only changes the configuration of the system without changing its function.

Claims 16,17-18,20,24,25,29,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross in view of Stevens et al.

Cross does not disclose a fluid bed dryer, a second cutter, sizing and grinding devices.

Stevens et al disclose an extruder system for production of feed supplement. They disclose the use of a fluid be dryer, first, second cutter, milling and sieving device. ( see col. 5 lines 16-61)

It would have been obvious to one skilled in the art to use any drying device known in the art and fluid bed dryer is well known in the art as shown by Stevens et al. It would also have been obvious to incorporate more than one cutter, grinding and sizing devices as taught by Stevens et al into the Cross system when desiring to make small size products. It would have been obvious to by-pass the second cutter or grinder depending on the ultimate size of the end product desired.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nash et al disclose a system for making an extruded cooked product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 17, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794